

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ALEGRIA REAL ESTATE FUND II,
12 LLC,
13 Plaintiff,
14 v.
15 SHARON A. DEYOUNG; and DOES
16 1-10, inclusive,
17 Defendants.

Case No. 13cv1300 BTM(WVG)
ORDER REMANDING CASE

17 On June 5, 2013, Defendant Sharon A. DeYoung (“Defendant”) removed this
18 unlawful detainer action from the Superior Court of California, County of San Diego.
19 Defendant contends that removal is proper because the Court has federal question
20 jurisdiction over the matter.

21 However, upon review of the underlying Complaint, it appears that the unlawful
22 detainer action is pursuant to state law and does not arise under federal law as required
23 by 28 U.S.C. § 1331. Whether a claim “arises under” federal law is governed by the
24 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only
25 when a federal question is presented on the face of the plaintiff’s properly pleaded
26 complaint.” Caterpillar v. Williams, 482 U.S. 386, 392 (1987). Defendant contends
27 that the Court has federal question jurisdiction because the Notice of Trustee Sale did
28 not notify her of the location of the sale so as to afford the Defendant the opportunity

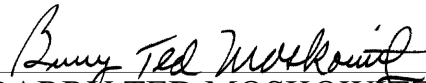
1 to cure the default, in violation of Defendant's right to due process.

2 However, it is "settled law that a case may not be removed to federal court on the
3 basis of a federal defense." Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463
4 U.S. 1, 14 (1983). Furthermore, the Court has no basis for concluding that diversity
5 jurisdiction exists. 28 U.S.C. § 1332(a).

6 The removing defendant always has the burden of establishing that removal is
7 proper, and the court resolves all ambiguity in favor of remand to state court. Gaus v.
8 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Since the Court does not appear to have
9 jurisdiction in this matter, it hereby **REMANDS** the action to the Superior Court of
10 California, San Diego County.

11
12 **IT IS SO ORDERED.**

13 DATED: June 12, 2013

14 
15 BARRY TED MOSKOWITZ, Chief Judge
16 United States District Court
17
18
19
20
21
22
23
24
25
26
27
28